BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
Clarifying the Obligations of	)	File No. _____
Tower Constructors With Respect	)	
To Indian Tribes Under Section 106	)	

PETITION FOR DECLARATORY RULING

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PTA-FLA, Inc. (PTA) hereby petitions the Commission for the reasons set forth below to clarify the obligations of persons constructing or modifying certain structures under the provisions of Section 106 of the National Historic preservation Act[1] and the National Programmatic Agreement ("NPA"). The clarifications sought include both (i) the extent to which Section 106 and the NPA apply *at all* to structures which do not require registration under the Commission's tower registration rules or an environmental assessment under the National Environmental Protection Act, and (ii) the extent to which coordinating historic preservation issues with Tribal representatives can be streamlined to ensure that the interests of Indians in sacred places are respected while eliminating unnecessary coordination efforts that are burdensome and expensive to Tribes and structure constructors alike. Because the clarifications sought here are matters of FCC interpretation of the NPA's scope and how it is implemented, a Declaratory Ruling is the appropriate vehicle for addressing the problem. As will appear in Section III, there are few recommendations to categorical exclusion from historical processing which will likely require amendment of the NPA. Thus, while noting those suggestions here,

[1] 54 U.S.C. Section 306108.

this petition will also be filed in Docket 15-180 where the Commission is considering updates and improvements to the NPA.

SUMMARY

This petition will first outline the history of the Section 106 historic preservation review process as the Commission has administered it. The process has generally worked to permit relatively prompt reviews of most historic sites to ensure that they are protected from impairment. The process developed by the Commission over the years to protect sites of historic interest to Indian tribes has, however, resulted in unanticipated delays and costs. The TCNS process standardizes efforts to identify and contact Indian tribes whose interests might be affected by a proposed construction. But its requirement of repeated notifications to tribes, sometimes without receiving any response, interjects in itself several months of delay into the construction process even when no impairment to an Indian site is implicated. More recently, tribes have expanded the range of areas where their interests lie, thus multiplying many times over the number of tribes who must be notified for a given site and the number of sites which are subject to review. At the same time, tribes have increasingly charged higher and higher fees to review proposed constructions in their areas of interest. The availability of these fees and payments to tribe members to "monitor" construction has probably encouraged the expansion of areas of interest since the more sites a tribe reviews, the more revenue it generates. Given the miniscule number of sites that are actually found to affect Indian burial grounds as a percentage of sites reviewed, the process seems to not only be addressing a problem which does not exist, but is actually creating a *new* problem by delaying the construction of the tower infrastructure needed to deliver broadband to unserved or underserved areas.

A fair reading of the *CTIA v. FCC* decision in 2006, *infra*, makes it clear that the Court did not intend to approve application of the Section 106 process to all construction activity related to communications towers, but only such activity as requires specific Commission site approval -- not just a geographic area license. A declaratory ruling to the effect is requested here.

Finally, in addition to the declaratory ruling, PTA suggests several measures that can be taken by the Commission to ameliorate the hardships that the current situation has created: ban administrative fees altogether or limit them to nominal sums, define tribal areas of interest more precisely to eliminate overly broad review requirements, and adopt the measures proposed in Docket 15-180 to exempt from the Section 106 process smaller towers, towers on previously disturbed or undisturbable land, and towers in rights of way where there is no likelihood or possibility of impairment of Indian remains.

I. Background

PTA and its affiliated companies has been in the business of operating networks to serve low income populations and constructing and collocating on communications towers for almost two decades. In the process of developing over 700 cell sites, it has accumulated a wealth of experience in dealing with the historic preservation process established by Section 106 and the NPA. It is important at the outset to make clear that PTA appreciates, respects and supports the objectives of the NHPA to preserve the integrity of historic places, whether they are sites with significance to those who colonized this continent and their progeny, or sites sacred to the native Indian Tribes who were often brutally and forcibly removed from their ancestral homelands. Respectful treatment of such sites is a value which the NHPA rightly protects and which PTA fully intends to preserve.

The Commission, the tower industry, and the affected SHPOs, NHOs and THPOs have now had twelve years of working with the NPA and the implementation procedures which have developed. This is a good time to take a collective step back, review the accomplishments and detriments in the program which have occurred to date, and consider whether the well-intentioned measures adopted by the Commission to carry out its historic preservation mission have perhaps had counterproductive unintended consequences.

A. The Section 106 Review Process

The process of developing a new site for a telecommunications tower under the best of circumstances involves running a gauntlet of regulatory requirements. After locating a suitable site for development, the tower constructor must buy, lease, or obtain an option on the site to assure its availability. Then there are often zoning regulations which must be met accommodated or variances which must be sought. Local building permits normally must be applied for and obtained. There is always an environmental screening, and if the site is environmentally sensitive, the site must be examined for impacts on local flora and fauna, including endangered or threatened species. FAA approval must be sought if the tower is above 200 ft. or near an airport. And we are not even counting the relatively rare situations where an environmental assessment must be done due to potential adverse impacts on the environment. Each of these overlapping federal and local regulatory schemes serves an important purpose in the pre-construction process, but each of them also interposes delay in the construction timetable. Here we intend to address one particular regulatory hurdle: the historic preservation part of the process.

The historic review process under the Commission's current interpretation of the National Programmatic Agreement is triggered in the vast majority of new tower construction projects.

Typically this involves coordination with state historic preservation offices (SHPOs) and Indian tribes that have asserted an interest in the particular county or state or region where the construction is proposed (THPOs). In PTA's experience, the SHPO review process is relatively straightforward. Historic sites and places are normally known matters of public record, so a prospective tower constructor can either identify and avoid those sensitive areas at the outset or take concrete steps to mitigate possible adverse effects to historic properties. The SHPOs are usually able to review a Form 620 and respond within weeks, indicating that there is or is not a problem with the proposed construction. Some SHPOs charge a small processing fee, but many of them are state-run and financed, so there is no need for the tower constructor to bear the cost of their review process. This process has worked since it usually ensures that historically sensitive areas are identified and adverse effects considered quickly and inexpensively.

This unfortunately is not true in most cases of the tribal review process. In an attempt to regularize the manner and timeframe in which tribes must be notified of proposed construction in their areas of interest, the Commission has established the Tower Construction Notification System (TCNS). This system identifies the tribes that must be notified about particular projects and handles the electronic notification to them. This system helps to alleviate the serious problem of locating and identifying interested tribes (since the interest of a tribe in a particular spot is often not immediately obvious) and their contact persons (who are often difficult to identify in tribal administration). The system establishes default timeframes for responses, follow up, and approval, all of which should speed the process along while ensuring the right tribes are made aware of projects that might affect them. In real life, the process runs something like this:

1. Day one – Job assigned. A survey with final location/coordinates will be required (or at minimum the coordinates from the surveyor with confirmation that the area will be marked or flagged to indicate the project area).

2. Day 5-7 - TCNS filed with FCC (early in the process, before construction begins). The notice is sent to the tribes by the FCC the first Friday (2am) after it is filed. This notice contains a list of tribes and information regarding their initial response and fees, requirements

Tribes have 14 days to respond with interest or no interest

a. If tribe hasn't responded initially after 14 days, a second attempt is made to contact them

b. If the tribe has not responded after 20 calendar days from the 2nd contact date, the applicant can refer the tribe to the FCC. 10 days after such a referral, it can consider tribal consultations complete (Only applies to tribes who have not responded – see below for those who have an interest in the site and want to be consulted)

3. Week 2 – site visit, records search. Arch survey

4. Weeks 3 -4– Draft NEPA sent out, Section 106 is filed, regarding the proposed tower. Tribes must have already been notified through the TCNS, all surveys done, reports are uploaded. SHPO and tribes have 30 days to respond once they receive these materials. In some states the 106 is electronically received; in others it must be mailed. Different states have different requirements.

a. SHPO approval is required for project that no Historic properties will be affected.

b. Tribal consultations and responses that no sites or properties will be affected is required.

c. USFW Section 7 is sometimes required in certain states if no blanket authorization for cell towers exists in that state. If species habitat is noted onsite, an Informal Biological Assessment report or other report (e.g., a bat survey) will be required. Additional time will be required for consultation if a formal species survey is required, possibly an additional 30 days.

5. Week 5 – Tribal processing fees and requested materials (archaeological survey, maps, SHPO concurrence, etc.) sent to all interested tribes according to their respective consultation guidelines.

6. Week 6-8 – Refer to FCC any tribes which have been sent materials and have not responded, or have not responded at all to initial TCNS notification.

7. Week 10 – Once all responses from SHPO, USFW, and all interested tribes have been received and cleared, the NEPA will be deemed final and the project may proceed.

This timeline (which includes SHPO and environmental clearances which are obtained concurrently with the tribal notifications) takes anywhere from 70 to 82 days *in the absence of any complicating factors.*

In addition to this lengthy delay which has been structurally built in to the TCNS, there are two additional factors which have become increasingly serious obstacles to fast and efficient tower construction: the expansion of tribal areas of interest and the charging of excessive administrative fees for reviews.

Areas of Tribal Interest. The Commission's TCNS process allows Indian tribes to self-select what geographic areas are of concern to them. The original intent of this provisions was understandable: in addition to reservations with identifiable political boundaries, some Indian tribes had also been displaced from their original lands by colonial and frontier expansion. Indians therefore had burial grounds and other sacred places that are outside reservations and not clearly identified on any map. The easiest solution to this problem was to allow Indians to identify these areas themselves. What has happened, however, is that some tribes have declared relatively vast ranges of the United States to be areas of interest, including entire states that they may or may not have passed through at some point in the last four centuries. If a tribe hunted in Tennessee in the 17th century or walked through Kentucky on its way west, those entire states can be declared areas of interest, requiring every tower constructed anywhere in those states to be evaluated for effects on Indian burial grounds.

The financial incentive for tribes to expand areas of tribal interest as much as possible will be discussed below, but we will only observe now that the review process here has been turned upside down. Normally the burden is on the party desiring protection of a given historical site to identify that site so that its location and significance are known to everyone. This is the way it works with the historical sites which fall within the SHPOs' jurisdiction. The historic community makes known precisely where their sites are, and the constructors then explain what,

if any, effect their project will have on those sites. This permits efficient evaluation of problematic sites by both constructors and the SHPOs whose job it is to protect the sites from impairment.

Conversely, the TCNS process requires constructors to provide detailed information to as many as a dozen tribes for a project which most likely will have no effect on any of their sacred places. In a recent example, PTA proposed to build several sites in Tennessee. The TCNS system identified eight to ten different tribes who all claimed an interest in the particular sites. In the end, after months of delay, none of the sites were determined to be of actual concern to *any* of the tribes. PTA or its affiliates have sent out thousands of notices through the TCNS system over the years and have never received a single indication that any Indian burial ground or other sacred place was implicated. Multiply this by scores of other tower-building firms, and you have hundreds of thousands of sites being evaluated for tribal impact with virtually no likelihood that the sites will create a problem. This is an astoundingly inefficient way of addressing the legitimate interest of the tribes that everyone agrees should be protected. PTA will set forth in Section III below some suggestions as to how this process could be improved while ensuring that tribes have a full opportunity to express their views or concerns with respect to particular sites.

"Processing fees" have become more widespread and more excessive. The public review process embedded in the Communications Act and the FCC's rules generally involves four steps: (i) the proponent of a particular application or rule change files the appropriate paperwork with the Commission; (ii) the proposal is put out on public notice for the public to know what is being proposed and have an opportunity to comment; (iii) comments or oppositions and responsive filings are made with the Commission; and (iv) the Commission issues a decision. In every case, the proponent of an action is deemed to be acting in its own best

interests, and those opposing the proposition are deemed to be acting in theirs. In no case do the FCC's rules provide that prospective opponents of a particular action must be paid to determine whether they wish to lodge a protest – except one: tribal notifications. Unlike citizens groups, parents concerned about children's programming, historical associations worried about a proposed construction, neighbors concerned about RF radiation, radio stations which might be affected by a new station in the vicinity, or a host of other people or institutions who might possibly be affected by something the FCC is considering, only Indian tribes now routinely require and receive a payment to review and consider a tower construction proposal.

It was not always so. When the tribal notification process first began, many tribes showed little interest in reviewing Forms 620, the vast majority of which would likely have no impact on their interests. Indeed, at the beginning of the TCNS, a major problem was the fact that many tribes routinely failed to respond at all to notifications, leaving tower erectors in limbo. The Commission had to impose response timetables, re-contact obligations, and default approval measures just to keep the tribal notification process from indefinitely holding up new construction. Then a handful of tribes began requesting an administrative "fee" to cover the cost of their review of the application. The initial fees were on the order of $50 or $100. While it seemed peculiar that people concerned about the effect of a proposal on their own interests should have to be paid to look into it, most tower constructors shrugged and paid the fees. Slowly the fees crept up to $200, then $250, then $400 or $500. As the "fees" grew, more and more tribes decided that they too needed a fee to review Forms 620. And the range of areas of interest of each tribe also began to grow, significantly expanding the number of Forms 620 that had to be reviewed by each tribe. We are now at the point that Indian tribes are charging as much as $1,000 to review a single Form 620, and the end is nowhere in sight.

All of this, of course, is exactly what the laws of economics would dictate. If a firm or tribe is given gating power over a scarce commodity at effectively no cost to itself, it will inevitably exact economic "rents" or tolls that will escalate until the government intervenes to remove the gating power or impose limits on the tolls that can be exacted. We are at that point now. For four recent sites that PTA recently proposed to construct, it was charged a total of $20,000 by eight or ten tribes to review the four sites. The lowest fee was $400. The mean was $500. Two of the tribes charged $1,000 a piece for each site they reviewed. This begins to seem less like an earnest effort by cash-strapped tribes to protect their sacred burial grounds and more like a revenue-generating mechanism for the tribes and their members.

The current situation is neither fair nor sustainable. As indicated above, the TCNS adds months at minimum to the process of completing the Section 106 process. The tribal fees have become so exorbitant in some cases as to approach or even *exceed* the cost of actually erecting the tower. All of this necessarily delays and adds to the cost of constructing the towers that are essential to the achievement of one of the Commission's highest imperatives: getting broadband and effective communications to all segments of the American public. This might be acceptable if the process served some discernible public interest purpose, but the fact is that in the vast majority of cases (over 99.9 % in our experience), there is no adverse impact on a tribal site at all. In none of these sites has PTA or any notified party (some of which require payment to be on site) ever found a tribal impact. There is a better way to handle this that can focus on the areas that are of greatest concern to Indians without delaying all construction and adding a double digit percentage increase to the cost of a tower.

II. The Application of Section 106

One solution to the problem is to limit the breadth of the Section 106 obligation to the towers understood by the federal courts to be covered by the Act's reach. To consider this approach, we must first recall the scope of Section 106. As the D.C. Circuit has pointed out, Section 106 only requires federal agencies to take into account the effects of their undertakings on historical properties included or eligible for inclusion in the National Register of Historic Places. It does "'not require [a federal agency] to engage in any particular preservation activities; rather Section 106 only requires that the [agency] consult the [SHPO][2] and the [Advisory Council on Historic Preservation] and consider the impacts of its undertaking.'" *CTIA-The Wireless Association v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (hereafter, "*CTIA*"), quoting *Davis v. Latschar*, 202 F. 3d 359, 370 (D.C. Cir. 2000). Importantly, Section 106 does not come into play at all if there is no federal undertaking involved in the construction.

This was the key issue in CTIA when the wireless industry challenged the Commission's application of the rule to sites that were constructed under the non-site-specific geographic licenses typical of cellular systems: is there a "federal undertaking" when no federal agency reviews or approves the construction at issue? To decide this issue, the Court in *CTIA* first reviewed its previous ruling in *Sheridan Kalorama Historical Ass'n v. Christopher*, which found that a federal "undertaking" for Section 106 purposes could be a project funded or licensed by the federal government, but also one which requires federal approval. Then, in looking at the Commission's rules implementing the National Programmatic Agreement, the Court had no trouble finding that *where a tower registration is required*, there is a federal approval. *CTIA* at pp 113-114. In a footnote, the Court made clear that a federal undertaking is present *only* when

[2] THPOs (Tribal Historic Preservation Offices) and NHOs (Native Hawaiian Organizations) must also be consulted.

tower registration is actually required. *Id.* at footnote 4. The Commission had suggested that an undertaking occurs "at least" where a registration is required, but the Court re-stated that to apply "only" where registration was required.

The FCC also proffered a second basis for finding a federal undertaking: the "limited approval authority" retained when an environmental assessment must be submitted in connection with a construction activity. *CTIA* at p 114. The Court found that FCC review and approval of environmental assessments is indeed a federal undertaking. But environmental assessments as opposed to an environmental checklist are, of course, undertaken in only a very small handful of situations. The Court was therefore basing its decision on the assumption that the "vast majority of towers" are not covered by tower registrations or environmental assessments, do not involve federal undertakings, and therefore are not covered by the NPA. *CTIA* at footnote 4. Given the Court's clear view that a Section 106 obligation is not triggered under the NPA by a licensee who constructs a site pursuant to non-site specific license that does not require any federal approval, we must assume that the Commission's NHPA writ runs only to situations where a licensee or applicant is seeking a site specific authorization or where tower registration is required. A fortiori, where a site is being constructed by an entity that is not even a license holder or applicant and where no tower registration or environmental assessment under Section 1.1308 of the rules is required, it is impossible to find a federal undertaking that triggers 106 obligations.

The Court's position is confirmed by simple reference to the terms of Section 106 itself. The statute requires a Federal "independent agency having authority to license any undertaking" to take into account the effects of the undertaking on historical sites "prior to the issuance of any license." 16 U.S.C. Section 470f. (emph., added) Congress could not possibly have intended

Section 106 to apply to geographically defined, non-site specific licenses because the Commission cannot even know where the proposed sites are until long *after* the licenses have been granted. Because the Section 106 process must be tied to a licensing activity that occurs prior to, and thus specific to, a given construction project, the mere fact that a site is constructed or used under the authority of a geographic area license does not, and could not constitute the federal "approval" which Section 106 encompasses. Rather, the Court's narrower view of what constitutes a federal approval – one which is related to a specific site – is the only view that makes sense under the "prior approval" language of the statute.

The Commission has seemed in some pronouncements to adhere to the Court's view. See, for example, *Panhandle Telecommunications Systems, Inc.*, DA 06-2063, at footnote 14. There the Enforcement Bureau stated that "[T]he requirements of the Nationwide Programmatic Agreement apply to Commission licensees, permittees, registration holders, and applicants or prospective applicants for a wireless or broadcast license, authorization, or antenna structure registration." Nothing in this straightforward declaration of the scope of the Commission's responsibilities in this area suggests that towers constructed by non-licensees which do not require Commission approval are subject to the NPA. To the extent that the Commission would apply the NPA to non-site specific tower construction activities by licensees, this would seem to run beyond the limits established by the Court.

The gist of all this is that Congress intended Section 106 to apply not to *all* construction activity but only to activity that requires specific federal approval. All other construction activity can continue to take place under whatever local or state rules that apply. Congress deliberately limited the application of the NHPA to situations where federal approval is involved, and there is

no suggestion, much less a mandate, that federal agencies apply the Act so as to capture a far broader range of construction activity.

Despite the *CTIA* decision – and perhaps because the decision was based on a premise set forth in a footnote but not discussed at length by the Court -- the Commission has informally applied the Section 106 process to all communications-related tower construction, regardless of whether registration is required. There is no need for, and no authorization for, the Commission to impose the significant cost burdens and delays that are associated with the Section 106 process on small towers which do not require specific approval or registration any more than they or other federal agencies require Section 106 obligations to be applied to home building, commercial construction, a pool installation, or any number of generally more disruptive projects. The burdens and delays associated with broadening the Section 106 process beyond the scope intended by Congress will become more critical and more oppressive as the industry moves to small cells that will almost never be of historical concern but would nevertheless be subject to the full panoply of Section 106 processing. A prompt clarification by the Commission that towers not requiring FCC registration and not otherwise requiring an FCC environmental assessment are not subject to the 106 process would not only speed the deployment of cell towers at lower cost, but would also relieve SHPO's and THPO's of the unnecessary burdens associated with reviewing sites that will rarely cause historical or tribal concern.

The Commission has, of course, been examining the impact of the Section 106 process in connection with its Section 106 Scoping Document in Docket 15-180 released last year. There the Commission focused on ways that the burdens and delays associated with the Section 106 process could be eliminated or minimized for small cell projects. The Commission's initiative in this regard is timely and much needed, given the looming advent of thousands of very small cell

installations in connection with 5G deployments. The Commission seemed to recognize that in the vast majority of cases, these deployments will have no impact on historical structures or tribal interests, so it floated a number of improvements to the current system to ensure that Section 106 does not get in the way of this next wave in technological advancement. The response of the industry almost unanimously supported the Commission's initiative in this area, pointing to many of the same needless delays and expenses in the small cell arena that we have here identified more generally. PTA applauds this effort and below proposes some additional reforms that will dramatically reduce the cost and lead times involved in building smaller towers.

III. Steps the Commission Should Take

The following steps can and should be taken to minimize or eliminate the problems identified above. These measures are intended to preserve and protect the interests of tribes in protecting sacred places while limiting the overexpansion of the review process to areas which have virtually no likelihood of adverse impact on those sites.

1. Grant the instant request for a declaratory ruling that site construction by non-licensees and/or licensees under non-site specific licenses where neither FCC registration nor a Section 1.1308 environmental assessment by the Commission is required do not constitute a federal undertaking and therefore are not subject to the Section 106 process. As set forth above, this was the premise of the Court's approval of the FCC's regulatory approach, and limitation to that premise would not only follow the mandate of the NHPA but conform to the Court's ruling. This relief in itself would eliminate 90% of the problems.
2. Adopt the measures proposed by the Commission in Docket 15-180 to exempt various construction categories from the Section 106 process should be adopted. In particular,

any construction which does not create any material new subsurface disturbance should not have to undergo the tribal review process.

3. To deal with the issues associated with tribal review, we urge the Commission to adopt the following:

    a. Prohibit the payment of fees for tribal reviews altogether. In no other circumstance does the Commission require the payment of fees as a gating toll to interest groups who might be affected by a Commission action, and there is no reason to do so here. The fee payment practice has demonstrably contributed to the expansion of required reviews and the attendant delays. In *Narragansett Indian Tribe v. Warwick Sewer Authority*, 334 F.3d 161 (1st Cir., 2003), the Court flatly rejected a tribes demand to be paid to monitor construction activities; the tribe was entitled only to be consulted and nothing more.

    b. Alternatively, the reviewing fees should be limited to no more than $50 unless the tribe demonstrates that the review is exceptionally complex. In no event should the fee exceed $200.

    c. Tribes should be required to identify under objective, independently verifiable criteria the areas where construction could reasonably be deemed to have an impact on tribal grounds. The mere fact that tribes progressed through an area or hunted in an area two hundred or a hundred years ago should not be a basis, without more, for declaring the entire area subject to the Section 106 process. By limiting and clearly defining areas where tribes actually resided or habituated, tower constructors can have a better idea of what sites to avoid before tower

planning even begins. Areas of tribal concern should be known or knowable facts for tribes and the public alike.

The backwardness of the current process could be likened to a SHPO indicating that there is a historic site somewhere in the District of Columbia that needs to be protected, but the SHPO will only tell you (for a fee) where the historic site is *not* located. The infinitely more efficient and rational approach is to do exactly what the historic community now actually does: publicly identify where historic properties *are*, thus permitting constructors to either avoid them altogether or know what they have to deal with at the outset. A similar approach should be taken to protect tribal sites. By having everyone work from the same maps, potential impacts on tribal areas of concern could be significantly reduced, also reducing the need for totally unnecessary reviews.

d. In those rare instances where tribes need to preserve the secrecy of particular sacred sites to avoid unwanted intrusions, such sites could be identified to the Commission in confidence, and the Commission could advise prospective constructors in the area that the site will require coordination with and review by a particular tribe.

e. PTA's experience, one which is shared by many of the commenters in Docket 15-180, is that tribal tower site reviews almost never result in a finding of adverse impact on a tribal site. This in itself suggests that a massive amount of effort and money is being directed at a problem which does not truly exist. Perhaps a better approach both from the perspective of tribes and the construction industry would be to have an insurance program paid into by all tower constructors. In those rare

circumstances where a verifiable Indian burial ground is discovered at a tower site project, the insurance would cover the cost of immediate stoppage of work on the site and restoration of the property to its original state. This would ensure at relatively small cost that tower constructors would not violate the integrity of previously unknown Indian sites. The crews working on such a site and the people they work for would then be incentivized to report any burial ground they came across as opposed to the current incentive to not report it since the result would be that they would all get paid the same but not have to complete the work.

f. The NPA and Collocation Agreements should be amended to exempt from review sites which will obviously have no effect on tribal burial grounds. These include sites which have been previously disturbed (parking lots, farm lands, previously developed sites, sites built on solid rock, sites that sit on top of the ground and don't disturb the sub surface, and the like). Sites falling in designated utility or highway rights of way should also be excluded. Collocations on existing structures should also be categorically exempt from tribal review. While such sites might require historical review, these would never have an adverse tribal impact.

IV. Conclusion

PTA urges the Commission to take swift action on this petition by seeking input from the industry as well as the affected tribes and the historical community. We firmly believe that the mandate of the National Historic Preservation Act and the legitimate interests of all parties can be much more efficiently and expeditiously preserved by a more targeted application of the law. Pending final Commission action on this petition, PTA requests that the payment of

administrative fees to tribes be suspended immediately since no basis in the law exists for the exaction of such payments.

Respectfully submitted,

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